

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

BOBBY GENE WHITE,

Plaintiff,

v.

Case No. 1:11cv507

DR. ABDUL JAMALUDEEN,

Defendant.

**DR. JAMALUDEEN’S MEMORANDUM OF LAW IN OPPOSITION
TO THE PLAINTIFF’S REQUEST FOR A SUBPOENA**

COMES NOW Defendant Dr. Abdul Jamaludeen (“Dr. Jamaludeen”), by counsel, and, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, files this memorandum of law in opposition to the Plaintiff’s request for a subpoena to be issued to ConMed Healthcare Management, Inc.

STATEMENT OF THE CASE

This is a civil rights lawsuit, under 42 U.S.C. § 1983, brought by Bobby Gene White, an inmate at the Virginia Beach Correctional Center (“VBCC” or “the jail”), who is proceeding *pro se*, against Dr. Jamaludeen, a physician at VBCC. Broadly, White appears to allege that Dr. Jamaludeen denied White adequate medical care, in violation of the Eighth Amendment. White served Dr. Jamaludeen on November 30, 2011. (Process Receipt & Return, ECF No. 14.) On December 20, 2011, Dr. Jamaludeen filed a motion to dismiss because White’s complaint fails to state a claim. (Mot. Dismiss, ECF No. 15.) The motion to dismiss remains pending.

Discovery has not begun in this case. The Court has not held a scheduling conference, and the parties have not conducted a Rule 26(f) discovery conference. (*See* Order, Nov. 2, 2011,

ECF No. 12 (“[I]t is normal practice in *pro se* prisoner civil actions for defendants to file dispositive motions . . . before the start of discovery . . .”).) Nevertheless, on April 16, 2012, White filed a request with the Court for a records subpoena to be issued to ConMed Healthcare Management, Inc. (Pl.’s Req. Subpoena, ECF No. 25.) Because this request is premature, Dr. Jamaludeen opposes the issuance of the subpoena.

ARGUMENT

THE COURT SHOULD DENY THE PLAINTIFF’S REQUEST FOR A SUBPOENA BECAUSE DISCOVERY IS NOT YET PERMITTED IN THIS CASE.

The Court should deny White’s request for a subpoena because discovery is not yet permitted in this case. *See* Fed. R. Civ. P. 26(d)(1). Rule 26(d)(1) of the Federal Rules of Civil Procedure provides that, with limited exceptions not applicable in this matter, a “party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).” *Id.* Because the parties in this case have not conducted a Rule 26(f) discovery conference, discovery is not yet permitted.¹ *See id.* A subpoena is a form of discovery subject to the limitations of Rule 26. *See, e.g., Marvin Lumber & Cedar Co. v. PPG Indus.*, 177 F.R.D. 443, 443 (D. Minn. 1997) (“Rule 45 Subpoenas, which are intended to secure the pretrial production of documents and things, are encompassed within the definition of ‘discovery,’ as enunciated in Rule 26(a)(5) and, therefore, are subject to the same time constraints that apply to all of the other methods of formal discovery.”). Thus, White may not yet serve subpoenas in this matter, and the Court should deny his request for a subpoena.

CONCLUSION

For the reasons stated above, the Court should deny the Plaintiff’s request for a subpoena.

¹ Moreover, as the Court recognized in its November 2, 2011 Order, discovery in *pro se* prisoner cases should await resolution of dispositive motions. (*See* Order, Nov. 2, 2011, ECF No. 12.)

Respectfully submitted,

DR. ABDUL JAMALUDEEN

By counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. I hereby further certify that I will mail the document by certified U.S. mail to the following non-filing user:

Bobby Gene White
Inmate No. 10-003521
Virginia Beach Correctional Center
P.O. Box 6186
Virginia Beach, Virginia 23456
Pro se Plaintiff

/s/ _____
Kevin J. O'Brien

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